Filed 4/30/12 P. v. McBride CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>JOHN H. McBRIDE,<br><br>Defendant and Appellant. | B230044<br><br>(Los Angeles County<br>Super. Ct. No. SA074505) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Cynthia Rayvis, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted appellant John H. McBride of driving under the influence of alcohol or drugs in violation of Vehicle Code section 23152, subdivision (a) (count 1). Appellant pleaded no contest to driving when his privilege was suspended for a prior DUI conviction in violation of Vehicle Code section 14601.2, subdivision (a) (count 3). Appellant admitted that he had been previously convicted of violating Vehicle Code section 14601.2. The jury deadlocked on the charge that appellant had driven while having a 0.08 percent or higher blood-alcohol ratio in violation of Vehicle Code section 23152, subdivision (b) (count 2), and the trial court declared a mistrial and dismissed this charge. The trial court found true the allegation that appellant had one prior conviction within the meaning of Penal Code[1] sections 667, subdivisions (b) through (i), and 1170.12, subdivisions (a) through (d), and three prior convictions within the meaning of section 1203, subdivision (e)(4).[2]

After denying appellant's *Romero* motion,[3] the trial court sentenced appellant to a total term of six years in state prison. The sentence consisted of the upper term of three years on count 1, doubled to six years due to the prior strike. The court imposed a concurrent term of six months in count 3.

Appellant appeals on the grounds that: (1) the trial court's admission during the court trial of the CLETS[4] printout as evidence of appellant's prior conviction violated appellant's Sixth Amendment right to confrontation; and (2) there was insufficient

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1 All further references to statutes are to the Penal Code unless stated otherwise.

2 Section 1203, subdivision (e)(4) prohibits a grant of probation to any person twice previously convicted of a felony.

3 *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

4 "CLETS" is the acronym for the California Law Enforcement Telecommunications System, a Department of Justice computer system that reports criminal history information. (*People v. Martinez* (2000) 22 Cal.4th 106, 113.)

evidence to support the trial court's finding that appellant suffered a prior conviction for the purposes of the Three Strikes law.

## FACTS

### Prosecution Evidence

On May 10, 2010, at approximately 2:00 a.m., Hawthorne Police Sergeant Shawn Shimono and his partner, Sergeant Christopher Wiley, were on patrol. In the area of Rosecrans and Hawthorne Boulevards, Sergeant Shimono observed a 1994 Dodge Plymouth Caravan exit a parking lot driveway and make a fast turn. Sergeant Shimono noticed that the left tail lamp was out, the car was speeding, and it was weaving in the lane and going towards the curb. Sergeant Shimono suspected that the driver was impaired. Sergeant Shimono and his partner decided to conduct a traffic stop and illuminated their overhead light bar. The Caravan did not immediately stop, but turned left into a driveway in violation of the Vehicle Code. Sergeant Shimono identified appellant as the driver in court.

Sergeant Shimono approached the passenger, Shalene Jeffery, while Sergeant Wiley approached appellant. Jeffery exited the vehicle and appeared intoxicated. Sergeant Wiley told appellant to go to the sidewalk where Sergeant Shimono noticed a strong odor of alcohol coming from appellant. Appellant had bloodshot eyes, slurred speech, and was unsteady on his feet. Sergeant Shimono asked appellant some preliminary field sobriety test questions and decided to conduct field sobriety tests to determine appellant's level of impairment, if any.

Sergeant Shimono conducted several tests, which revealed a strong possibility that appellant was under the influence of alcohol. Sergeant Shimono then administered a preliminary alcohol screening (PAS) test to detect the presence of alcohol. The officers placed appellant under arrest for driving under the influence. Sergeant Wiley determined that appellant's license was suspended.

Appellant agreed to submit to a breath test and was transported to the police station at 2:32 a.m. for that purpose by Officer Sean Judd, who also booked appellant.

Officer Judd administered the breath test to appellant with a Data Master machine. The first result was obtained at 2:49 a.m. and showed appellant's blood-alcohol level to be .25. Officer Judd obtained the same result at 2:51 a.m.

Senior criminalist Ed Barley with the Los Angeles County Sheriff's Department testified that, in his opinion, all people with a .08 in blood or breath tests are unsafe to operate a motor vehicle. He was familiar with the Data Master machine and testified to its accuracy. When given a hypothetical based on the test result and appellant's physical characteristics, Barley believed the individual would have had to consume about 13.9 drinks to achieve that level.

**Defense Evidence**

Jeffery, appellant's girlfriend, testified that on May 10, 2010, around 2:00 a.m., she came home and found appellant's jacket hanging in the stairwell of their apartment building. She believed he was unable to get in the apartment and went looking for him. Jeffery found appellant on the corner of Hawthorne Boulevard and 132nd Street. She got out of the car and gave appellant the car keys to drive. Appellant was not intoxicated. She did not see the officers administer any sobriety tests to appellant.

## DISCUSSION

### I. Admission of CLETS Printout

#### *A. Appellant's Argument*

Appellant contends that the decision in *People v. Morris* (2008) 166 Cal.App.4th 363, 373 (*Morris*), which held that CLETS printouts, or rap sheets, are not testimonial, does not survive the United States Supreme Court's decision in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305 [129 S.Ct. 2527] (*Melendez-Diaz*). According to appellant, the CLETS record is similar to the analysts' certificates held to be testimonial in *Melendez-Diaz* because the CLETS record was generated by law enforcement employees for the purpose of establishing a fact at a future criminal prosecution, and because the CLETS record is made under circumstances that would lead an objective witness reasonably to believe that the record would be available for use at a later trial.

This is shown by the fact that, in *People v. Martinez, supra,* 22 Cal.4th 106, 134, the California Supreme Court made it clear that the prosecution may use CLETS rap sheets to prove a prior conviction for purposes of increasing punishment. The admission of the rap sheet violated appellant's Sixth Amendment right to confrontation, and his sentence should be vacated.

***B. Proceedings Below***

The amended information alleged that appellant had one prior conviction within the meaning of sections 667, subdivisions (b) through (i) and 1170.12, subdivisions (a) through (d) (the Three Strikes law). The April 14, 1986 conviction was for robbery in violation of section 211 in case No. A913841.

During the court trial on the prior conviction, the prosecutor introduced the following documents regarding the alleged prior robbery conviction: (1) People's exhibit No. 6, which consisted of, inter alia, a certified document from the California Department of Justice called "Disposition of Arrest and Court Action Report" showing appellant's California Identification Index (CII) No. (A07601499); (2) People's exhibit No. 7, which consisted of, inter alia, a certified document from the Los Angeles Sheriff's Department that was an order for a 90-day commitment to determine whether appellant was eligible for probation following the conviction for section 211 and two photographs of John McBride; and (3) People's exhibit No. 11, consisting of a certified rap sheet (CLETS printout) for John Henry McBride, which contained appellant's CII No. and reflected the robbery conviction.[5]

Defense counsel voiced a foundational objection. She argued that the certifications were old for exhibits Nos. 6 (2003) and 7 (1990). She stated that the documents contained multiple layers of hearsay, and the rap sheet was inadmissible. She emphasized that all of the exhibits were no more admissible in a court trial than in a jury

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5 The contents of exhibit Nos. 6 and 7 are described more fully *post*.

trial. Defense counsel also argued that the People were obliged to prove a prior conviction by fingerprint comparison, that the photograph was 24 years old, and that some of the documents had several John McBrides with different dates of birth and interlineated entries.

The trial court replied that case law had held that rap sheets are admissible. The trial court agreed that the People's burden was not lessened in a court trial. Although the photograph was old, it looked like appellant, just a much younger version, and the arrest date on the photograph was January 26, 1986—the date of appellant's robbery arrest. The court reviewed the documents, including the rap sheet, and stated that they all appeared to be in order. The People pointed out that all the documents were under the same CII number, which was "essentially a code given to one individual based on a fingerprint. And they are all for John Henry McBride, the defendant in this case."

The trial court found beyond a reasonable doubt that appellant was the same John Henry McBride described in People's exhibits 6 through 11 and that, pursuant to the Three Strikes law, he had previously been convicted of robbery in case No. A913841.

***C. Relevant Authority***

The confrontation clause of the Sixth Amendment of the United States Constitution provides that "'[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.'" (*Crawford v. Washington* (2004) 541 U.S. 36, 42 (*Crawford*).) The confrontation clause has traditionally barred "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." (*Crawford*, at pp. 53-54.) "Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to

establish or prove past events potentially relevant to later criminal prosecution." (*Davis v. Washington* (2006) 547 U.S. 813, 822.)

In *Melendez-Diaz*, the United States Supreme Court held that notarized affidavits admitted to evidence as the sole evidence to establish that the substance the defendant possessed was cocaine were testimonial statements, and the analysts were "'witnesses'" for purposes of the Sixth Amendment. (*Melendez-Diaz, supra,* 557 U. S. at p. ___ [129 S.Ct. at p. 2532].) Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to """be confronted with""" the analysts at trial." (*Id.* at p. ___ [129 S.Ct. at p. 2532]), quoting *Crawford, supra,* 541 U.S. at p. 54.)

In *Bullcoming v. New Mexico* (2011) 564 U.S. ___ [131 S. Ct. 2705] (*Bullcoming*), the United States Supreme Court again held that an analyst's certificate was a testimonial statement that could not be introduced unless the analyst was unavailable for trial and the defendant had a prior opportunity to confront that witness. (*Id*. at p. ___ [131 S.Ct. at p. 2710].) Bullcoming's blood sample was sent to a state lab for testing after he was arrested for drunk driving. The analyst who tested Bullcoming's blood sample recorded the results on a state form that included a "'certificate of analyst.'" There was also a certificate of a reviewer. (*Id.* at p. ___ [131 S.Ct. at pp. 2710-2711].) At Bullcoming's trial, the analyst who tested his blood sample did not testify because he had been placed on disciplinary leave. The prosecution called another analyst who was familiar with the lab's testing procedures but had not participated in or observed the test on Bullcoming's sample.

The plurality opinion in *Bullcoming* explained that the surrogate analyst was an inadequate substitute for the analyst who performed the test. Surrogate testimony by someone who qualified as an expert regarding the machine used and the lab's procedures could not convey what the actual analyst knew or observed and would not expose "any lapses or lies" by the certifying analyst. (*Bullcoming, supra,* 564 U.S. at p. ___ [131 S.Ct. at p. 2708.) The court stated that, if the Sixth Amendment is violated, "no

substitute procedure can cure the violation." (*Bullcoming*, at p. ___ [131 S.Ct. at pp. 2708, 2716].)

*Bullcoming* reiterated the principle stated in *Melendez-Diaz* that a document created solely for an evidentiary purpose in aid of a police investigation is testimonial. (*Bullcoming*, *supra*, 564 U.S. at p. ___ [131 S.Ct. at p. 2717].) Even though the analyst's certificate was not signed under oath, as occurred in *Melendez-Diaz*, the two documents were similar in all material respects. (*Bullcoming*, at p. ___ [131 S.Ct. at p. 2717].)

***D. CLETS Printout Properly Admitted***

*1. Forfeiture*

Respondent argues that appellant failed to interpose a timely and specific objection to the admission of the rap sheet on confrontation clause grounds. Appellant's only objection was on hearsay grounds. Respondent contends appellant has therefore forfeited his claim that the admission of the evidence violated his Sixth Amendment right to confrontation. Appellant argues in his reply brief that he did not forfeit this claim because the record shows that the trial court's response demonstrates that the trial court understood the objection to be based on confrontation clause grounds, since it remarked that "'case law'" showed that rap sheets were admissible.

The issue is not whether the trial court had the confrontation clause in mind when it referred to case law, which its remark does not clearly indicate, but whether appellant objected on this ground below. "'It is, of course, "the general rule that questions relating to the admissibility of evidence will not be reviewed on appeal in the absence of a specific and timely objection in the trial court on the ground sought to be urged on appeal."' [Citations.]" (*People v. Ashmus* (1991) 54 Cal.3d 932, 972, fn. 10.) As appellant himself states, "'the objection must be made in such a way as to alert the trial court to the nature of the anticipated evidence and the basis on which exclusion is sought, and to afford the People an opportunity to establish its admissibility.'" (*People v. Partida* (2005) 37 Cal.4th 428, 435.) Our Supreme Court has held that a hearsay objection does not preserve a Sixth Amendment confrontation claim. (*People v. Redd* (2010) 48 Cal.4th

691, 730; see also *People v. Chaney* (2007) 148 Cal.App.4th 772, 778-779 [confrontation analysis under *Crawford* is "distinctly different than that of a generalized hearsay problem"].) Appellant's objection gave the People no such opportunity. In any event, because appellant now makes a claim of ineffective assistance of counsel, we determine the merits of his claim.

*2. Admission of CLETS Document*

*Crawford* noted that statements could be "'testimonial'" that were "'made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.'" (*Crawford*, *supra*, 541 U.S. at p. 52.) The United States Supreme Court in *Bullcoming* reiterated that, as stated in *Melendez-Diaz*, a document created solely for an evidentiary purpose in aid of a police investigation is testimonial. (*Bullcoming*, *supra*, 564 U.S. at p. ___ [131 S.Ct. at pp. 2716-2717].) *Melendez–Diaz* explained that a clerk, for example, could authenticate an otherwise admissible record, but could not do what the analysts did in that case—"*create* a record for the sole purpose of providing evidence against a defendant." (*Melendez-Diaz*, *supra*, 557 U.S. at p. ___ [129 S.Ct. at p. 2539].)

In *People v. Taulton* (2005) 129 Cal.App.4th 1218 (*Taulton*), the court held that records of prior convictions are not testimonial and not subject to *Crawford*'s confrontation requirement. (*Taulton*, at p. 1221.) *Taulton* reasoned, "'[R]ecords or copies of records of any state penitentiary, reformatory, county jail, city jail, or federal penitentiary in which [defendant] has been imprisoned' [citation] are prepared to document acts and events relating to convictions and imprisonments. Although they may ultimately be used in criminal proceedings, as the documents were here, they are not prepared for the purpose of providing evidence in criminal trials or for determining whether criminal charges should issue. Therefore, these records are beyond the scope of *Crawford*, and the court properly admitted them and considered them for the statutory purposes." (*Taulton*, at p. 1225.)

In *Morris, supra,* 166 Cal.App.4th 363, the court likewise held that the admission of certified records of convictions was nontestimonial. Referring to *Taulton's* reasoning, *Morris* noted that the primary purpose of rap sheets "is to permit law enforcement to track necessary information regarding the arrest, conviction, and sentencing of individuals and to communicate that information to other law enforcement agencies." (*Morris*, at pp. 370-371.) The court cited the statute that authorized the creation of the CLETS system, Government Code section 15151, which described it as "'an efficient law enforcement communications network available to all [law enforcement] agencies.'" (*Morris*, at p. 371, fn. 9.)

Appellant argues that, after the Supreme Court's elaboration of the meaning of testimonial in *Melendez-Diaz*, the California decisions in *Taulton* and *Morris* no longer survive. We disagree and conclude that these cases are controlling in appellant's case. As *Taulton* and *Morris* both noted, the records at issue are not testimonial because they are prepared for the purpose of documenting the acts and events related to the convictions, rather than to prove events relevant to a criminal trial. Although these records may ultimately be used in a criminal prosecution, that is not the reason for their creation. (*Taulton, supra*, 129 Cal.App.4th at p. 1225; *Morris, supra*, 166 Cal.App.4th at p. 371, fn. 9.) In *Melendez-Diaz* on the other hand, the court reasoned that the certification was, in essence, testimony, since it was the equivalent of a declaration made for the purpose of establishing or proving a fact at trial. The court emphasized that the "*sole purpose*" of the document was "to provide 'prima facie evidence of the substance's composition, quality, and the net weight." (*Melendez-Diaz, supra*, 557 U.S. at p. ___ [129 S.Ct. at p. 2529].) And, although appellant contends that *Melendez-Diaz* undercut *Morris*, the Supreme Court itself in *Melendez-Diaz* did not believe that its decision marked a substantial change in confrontation clause law, stating that its conclusion "involve[d] little more than the application of our holding in" *Crawford*. (*Melendez-Diaz* at p. ___ [129 S.Ct. at p. 2542].) Accordingly, there is no reason to conclude that *Melendez-Diaz* requires a different result than that reached in *Morris*, which took full

account of *Crawford*. The fact that *People v. Martinez, supra*, 22 Cal.4th at page 134, held prior to the *Crawford* decision that a CLETS printout was sufficiently trustworthy to satisfy admission under Evidence Code section 1280 does not alter the primary purpose for which the document is created.

## II. Sufficiency of the Evidence to Support Prior Conviction Finding

### *A. Appellant's Argument*

Appellant contends that the trial court considered other inadmissible evidence, in addition to the CLETS printout, to find that appellant suffered the prior robbery conviction. Appellant maintains that the trier of fact in the determination of the truth of a prior conviction allegation may look no further than the record of conviction. Since the record of conviction is limited to documents contained in court records leading to the imposition of judgment, and the documents on which the trial court relied were outside the record of the 1986 robbery conviction, these documents are inadmissible and cannot support the trial court's finding. As a result, appellant's sentence must be reversed.

### *B. Relevant Authority*

"On review, we examine the record in the light most favorable to the judgment to ascertain whether it is supported by substantial evidence. In other words, we determine whether a rational trier of fact could have found that the prosecution sustained its burden of proving the elements of the sentence enhancement beyond a reasonable doubt. [Citations.]" (*People v. Delgado* (2008) 43 Cal.4th 1059, 1066-1067.)

In *People v. Reed* (1996) 13 Cal.4th 217, 223, the Supreme Court synthesized its rule concerning what may be considered in assessing whether a prior conviction may be used to enhance a sentence as follows: "[T]he trier of fact may look to the entire *record of conviction* to determine the substance of the prior conviction. ([*People v. Guerrero* (1988) 44 Cal.3d 343,] 355.)" (Original italics; see *People v. Martinez, supra*, 22 Cal.4th at p. 118.)

### *C. Records of Prior Conviction*

Appellant specifically targets People's exhibits Nos. 6 and 7. Exhibit No. 6 consisted of: (1) a certified photocopy of a fingerprint card showing, inter alia, appellant's name, signature, the charge (section 211, robbery), and arrest date (January 26, 1986); (2) a certified document from the California Department of Justice called "Disposition of Arrest and Court Action Report" showing, inter alia, appellant's name, arrest date (January 26, 1986), CII number (A07601499), date of conviction (April 14, 1986), the charge ("211 PC robbery"), and the fact that appellant received three years' probation; (3) a certified copy of a fingerprint card showing appellant's name, signature, CII number, and appellant's 90-day placement disposition; and (4) two documents entitled "Probation Flash Notice,"[6] which contained appellant's name, CII number, his crime ("211 PC robbery"), date of arrest (January 26, 1986), and the disposition.[7]

Exhibit No. 7 consisted of: (1) a page entitled "Certification of Records" signed by a representative of the Sheriff's Department of the County of Los Angeles, certifying the documents that follow; (2) two photographs of John McBride showing an arrest date of January 26, 1986, for "211 PC robbery"; (3) a copy of a "Superior Court Temporary Commitment" for John Henry McBride showing a charge of "211 PC"; (4) a Los Angeles County Jail booking and property record showing, inter alia, appellant's name, the date of arrest (January 26, 1986), the charge (§ 211, robbery), and appellant's signature; and (5) a copy of a fingerprint card that contains no identifying information.

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**6** The Probation Flash Notice is a form letter sent from the Probation Department of Los Angeles County to the Chief of the Bureau of Identification in Sacramento requesting notification of any additional arrests of the named subject before the date of expiration of the subject's probation.

**7** These documents also contain a date of birth, but this varies between the documents, although they are all in 1965, and January 28, 1965, appears the most often.

***D. Evidence Sufficient***

We disagree with appellant's premise that the documents proffered by the People to prove the fact of the prior robbery conviction were not admissible as being outside the record of conviction. The California Supreme Court has not defined the term "record of conviction." (*People v. Woodell* (1998) 17 Cal.4th 448, 454; see *People v. Trujillo* (2006) 40 Cal.4th 165, 177 [noting that in *People v. Guerrero*, *supra*, 44 Cal.3d 343, the court expressly declined to address "'such questions as what items in the record of conviction are admissible and for what purpose'"].) The court has, however, "recognized that the term . . . could be 'used technically, as equivalent to the record on appeal [citation], or more narrowly, as referring only to those record documents reliably reflecting the facts of the offense for which the defendant was convicted.'" (*People v. Trujillo*, *supra*, 40 Cal.4th at p. 177, citing *People v. Reed*, *supra*, 13 Cal.4th at p. 223.)

*People v. Woodell* explained that, "[i]n holding that the trier of fact may not look beyond the record of conviction, the high court did not intend to create arbitrary and artificial barriers to proving the existence of the prior conviction. Rather, it merely intended to prevent the People from introducing new evidence outside the record of the prior proceedings." (*People v. Woodell*, *supra*, 17 Cal.4th at pp. 455-456.) In the instant case, the record contains, for example, a superior court order committing appellant for a 90-day assessment. The commitment document reflects that appellant suffered a conviction for a robbery (§ 211). This is proper evidence that appellant suffered a prior conviction for that offense. The fact that the order of commitment was made after appellant's conviction does not render the evidence inadmissible to prove the prior serious felony. The order of commitment is part of the record of the conviction, relating to punishment, and resort to such evidence does not violate the policies discussed in *People v. Guerrero*. (See *People v. Guerrero*, *supra*, 44 Cal.3d at p. 355; *People v. Scott* (2000) 85 Cal.App.4th 905, 913-914 [prison records may be used to show the fact of a conviction but not the substance of a conviction].)

In this case, unlike most others in which the proof of a prior conviction has been disputed, the issue is not the substance of the prior conviction. (See, e.g., *People v. Delgado* (2008) 43 Cal.4th 1059, 1067-1070; *People v. Reed*, *supra*, 13 Cal.4th at p. 221; *People v. Myers* (1993) 5 Cal.4th 1193, 1198.) This is because all robberies are serious felonies and qualify as strikes under the Three Strikes law. (§§ 667, subd. (d)(1); 667.5, subd. (c)(9); 1192.7, subd. (c)(19).) There is a significant difference between cases where the question is the substance of the prior conviction and cases such as this one in which the question is the fact of the prior conviction of a serious felony that is such by definition. (See *People v. Dunlap* (1993) 18 Cal.App.4th 1468, 1476.) Here, there is no need to delve into "the nature and circumstances of the underlying conduct." (*People v. Martinez, supra,* 22 Cal.4th at p. 117) and no threat that appellant will suffer "harm akin to double jeopardy and denial of speedy trial." (*People v. Guerrero*, *supra*, 44 Cal.3d at p. 355.) The People were not attempting to, and had no need to, "relitigate the facts behind the record." (*People v. Johnson* (1992) 3 Cal.4th 1183, 1242.) "Provided that other types of evidence (e.g., other official records) satisfy applicable rules for admissibility, they may be relied on to establish a prior conviction. [Citation.]" (*People v. Dunlap, supra,* at p. 1476; see Evid. Code §§ 452.5, 1530.)

Finally, we note that "'official government records clearly describing a prior conviction presumptively establish that the conviction in fact occurred, assuming those records meet the threshold requirements of admissibility. (See Evid. Code, § 664 ["It is presumed that official duty has been regularly performed"].) Some evidence must rebut this presumption before the authenticity, accuracy, or sufficiency of the prior conviction records can be called into question.' [Citation.] [¶] Thus, if the prosecutor presents, by such records, prima facie evidence of a prior conviction that satisfies the elements of the recidivist enhancement at issue, and if there is no contrary evidence, the fact finder, utilizing the official duty presumption, may determine that a qualifying conviction occurred. [Citations.]" (*People v. Delgado, supra*, 43 Cal.4th at p. 1066.) Appellant made no attempt to rebut the properly admitted evidence in this case.

We conclude that the evidence presented was not outside the record of conviction and was sufficient to support the trial court's finding that appellant suffered the prior conviction charged in the information, which was a serious felony within the meaning of the Three Strikes law. This is especially true in light of the fact that we have determined that admission of the CLETS report did not violate appellant's right of confrontation.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, P. J.
BOREN

We concur:

_____, J.
DOI TODD

_____, J.
ASHMANN-GERST